SHOW PROCEEDINGS AND ORDERS DATE: [05/03/89]

CASE NBR: [88106494] CFX STATUS: [ ]
SHORT TITLE: [Wrenn, Curtis L. -]
VERSUS [Benson, Lawrence P.] DATE DOCKETED: [020289]
PAGE: [01]

DATE	NOTE	PROCEEDINGS & ORDERS
Feb 2 1989		Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
Feb 2 1989		Motion of petitioner for leave to proceed in forma pauperis filed.
Mar 9 1989		DISTRIBUTED. March 24, 1989
Mar 27 1989		Motion of petitioner for leave to proceed in forma pauperis DENIED. Petitioner is allowed until April 17, 1989, within which to pay the docketing fee requried by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court. Justice Brennan, Justice Marshall and Justice Stevens, dissenting: For the reasons expressed in Brown v. Herald Co., Inc., 464 U.S. 928 (1983), we would deny the petition for a writ of certiorari without reaching the merits of the motion to proceed in forma pauperis.

Last page of docket

SHOW PROCEEDINGS AND ORDERS DATE: [05/03/89]

CASE NBR: [88106494] CFX STATUS: [ ]
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PAGE: [02]

DATE	NOTE	PROCEEDINGS & ORDERS
Apr 1 1989		Application (A88-795) for an extension of time within which to submit a petition for writ of certiorari in compliance with Rule 33, submitted to Justice Scalia.
Apr 4 1989		Application (A88-795) denied by Justice Scalia.
Apr 17 1989		ORDER OF MARCH 27, 1989 COMPLIED WITH.
Apr 27 1989		REDISTRIBUTED. May 11, 1989

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

NO 88-6494

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603,

Petitioner,

vs

LAWRENCE P. BENSON, INDIV. AND
OFFICIAL CAPACITY; THE TOLEDO MENTAL
HEALTH CENTER, STATE OF OHIO
9 South Detroit Street
Toledo, Ohio

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CURTIS L. WRENN, Pro Se
P. O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-4021

IN THE

SUPREME COURT OF THE UNITED STATES

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Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

The petitioner respectfully prays that a writ of certiorari will be issued to review the Order of the United States Court of Appeals for the Sxith Circuit of November 4, 1988.

QUESTIONS PRESENTED FOR REVIEW

This is a case in which the respondents obtained dismissal of plaintiff's claims at the trial level. If this Court grants the petition, it will have to decide whether rights of the petitioner were abridged by the lower courts' decisions. Specifically:

1. Whether the Court of Appeals abused its discretion and erred as a matter of law when it ruled that "... no clear error was committed by the district court in the present case. The material facts of the district court are fully supported by the record and the testimony and exhibits ..."

2. Whether the District Court's dismissal of the petitioner's retaliation claim, allegedly because he failed to establish a prima facie case of retaliation, was clearly erroneous and a clear abuse of discretion.

3. Whether the District Court erred as a matter of law and clearly abused its discretion when it held that the employer

articulated a legitimate reason for petitioner's discharge by stating he was fired because it "lacked confidence" in him.

4. Whether the petitioner's opposition to perceived unlawful employment discrimination and participation in EEOC procedures, and his advocacy on behalf of other employees and the institutionalized mentally ill patients, were protected by the First Amendment and a right secured to all citizens of the United States of America.

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CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT I:

> Congress shall make no law ... abridging the freedom of speech ... ; or the right of the people peaceably ... to petition the Government for a redress of grievances.

UNITED STATES CONSTITUTION: AMENDMENT V:

> Nor shall any person ... be deprived of life, liberty, or property, without due process of law.

UNITED STATES CONSTITUTION, AMENDMENT XIV:

> Nor deny to any person within its jurisdiction the equal protection of the laws.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1254(1), 1651 and 1915. This Court is being asked to review the decisions of the District Court and the Court of Appeals, both courts having made adverse decisions against the petitioner without considering the facts in the case.

The jurisdiction of this Court is also invoked to review the actions of the lower courts, in that they have made decisions which are contrary to decisions of this Court and the other courts of appeals. Moreover, the decisions, if left standing, will invalidate a mandate of Congress, i.e., Title VII of the Civil Rights Act of 1964, as Amended.

TABLE OF AUTHORITIES

OPINIONS BELOW

1. This is an action in which the petitioner (a Negroid American) sued the State of Ohio (Timothy Moritz, Director, Ohio Department of Mental Health (hereinafter "Moritz" or "ODMH"); Donald E. Widmann, Commissioner, Mental Health of ODMH (hereinafter "Widmann"); and Lawrence P. Benson, Superintendent, Toledo Mental Health Center (TMHC) of the ODMH)), in connection with the failure to hire him for the position of Assistant Superintendent of Programs in 1979, and the discharge from the position of Superintendent in 1980.

2. In response to the defendants alleged attempt to find qualified minorities by listing vacancies (including the position at issue in this case, Assistant Superintendent of Programs) with the National Association of Health Service Executives (NAHSE) (a predominantly Black organization of hospital administrators), the petitioner

submitted his application during the fall of 1978 for various positions which the defendants had listed as vacant. Petitioner submitted a second application in December 1978, for the position of Assistant Superintendent of Programs which the respondents advertised in Hospitals. Despite the petitioner's qualifications he was not interviewed nor hired. A younger less qualified male (James Shedno) was hired.

3. The petitioner filed a charge of discrimination with the EEOC (Charge No 052791758) in connection with the failure to hire. The EEOC issued a determination of "probable cause", and following ODMH's statement that it would not conciliate, the Department of Justice issued petitioner's his Notice of Right to Sue.

4. During the latter part of 1979, the petitioner, in response to the employer's advertisement, submitted an application for the position of Superintendent of TMCH and was hired effective December 16, 1979.

sometime around November 15, 1980 Ms Barbara Morgan, EEO Officer of ODMH, met with the petitioner in Columbus to discuss charge 052791758. During the meeting, Ms Morgan asked the petitioner to withdraw his charge. The petitioner declined to do so.

5. On December 16, 1980 the petitioner, without any prior notice and/or warning, was summoned to Respondent Widmann's office and informed that he was being removed from the position of Superintendent of TMHC. Widmann refused to provide an explanation or reason for the removal. He did, however, in response to petitioner's written request, inform the petitioner that the reason for his removal was "a lack of confidence in you and your administration of the Toledo Mental Health Center."

6. In January 1981 petitioner filed a second charge with the EEOC (052811127) in connection with the discharge, and alleged, among other things, that the discharge was

motivated by race and retaliation. The EEOC rendered a determination of "reasonable cause". The State of Ohio declined to conciliate, and the Department of Justice issued petitioner his Notice of Right to Sue.

7. A complaint was filed in the District Court on the basis of failure to hire and retaliatory discharge (C 81-571). A trial was held and the District Court found for the employer. Petitioner appealed that decision to the Court of Appeals. The court of appeals upheld the District Court's decision.

8. This petition for writ of certiorari is an appeal of the decision of the District Court, on the basis that that court's "Findings of Fact" are clearly erroneous, and its "Conclusions of Law" was based on an improper legal premise.

9. This case is similar to AND is directly related to a case currently before this Court. In the latter (Wrenn v.

Walinski, Case No. 88-6131), the petitioner also alleges, as he does below, that the District Court fabricated and/or created facts to support its decision. Petitioner respectfully submits that the decisions of the lower court are racially motivated in retaliation for the petitioner's attempts to vindicate his civil, legal and constitutional rights against various employers who have denied him equal employment opportunity and have attempted to prevent his efforts to seek legal redress. See App L.

REASONS FOR GRANTING WRIT

ARGUMENT I - THE FINDINGS OF FACTS BY THE DISTRICT COURT WERE CLEARLY ERRONEOUS

1. Contrary to Appendix A, petitioner's first application for the position of Assistant Superintendent of Programs was submitted in August 1988, in response to published announcements circulated to its membership by HASHE. Petitioner's race was identified by his membership in NAHSE. In addition, information provided to the EEOC by TMHC personnel clearly demonstrated a list of 37 applicants (Defendant's Exhibit #12) for the position. Although petitioner's name was included in the list, the person hired for the position (James Shedno) was not so listed as an applicant. Moreover, during the trial, the respondents provided NO evidence to show that Shedno ever applied for the position. The facts in the case demonstrate that Shedno was hired by word-of-mouth by Respondent Benson. See paragraph 3 of App A. See also, App K.

2. The District Court (paragraph 6) did not state "who" "treated (Charge No 052791758) as a conciliation and dismissed." In that connection, the charge was not treated as conciliated by the EEOC when it rendered a determination of "reasonable cause" on January 8, 1982; nor the Justice Department when it issued the Notice of Right to Sue on April 19, 1982; and not the Ohio Department of Mental Health when it informed the EEOC by letter dated January 25, 1982 "This will confirm our telephone conversation regarding conciliation of the complainant's charge (EEOC Charge No 052-791758). There will be no conciliation by the Department." /s/ Richard M. Epps, Chief, Office of Legal Services..

3. Contrary to the District Court (paragraph 7 of App A), Widmann was not the "appointing authority." The appointing authority was Timothy Moritz, in his capacity as Director of ODMH. Widmann was admittedly the person who terminated petitioner's employment. Curiously, however, pursuant to Ohio Revised Code (ORC) Section 5119.05 he was not the proper party to do so, i.e., the "appointing authority" with the power to hire and fire such superintendents was Moritz as Director of the Department, rather than Widmann as Commissioner. See also, Plaintiff's Trial Exhibit P (the letter of Timothy Moritz, as Director, appointing plaintiff as Superintendent of TMHC "pursuant to O.R.C. 5519.05).

4. Contrary to the District Court (paragraph 9 of App A), petitioner's immediate supervisor was not the District Manager (Paul Guggenheim and Roger Murray), but rather Donald E. Widmann, in his capacity as Commissioner of Mental Health (defendant's Exhibit 28, job description for the position of Superintendent which clearly indicates on its face "POSITION NO. AND TITLE OF IMMEDIATE SUPERVISOR 1000.0 commissioner of Mental Health).

5. Contrary to the District Court (paragraph 10 of App A) the respondents provided no plausible explanation for terminating the petitioner's employment. The reason given ("lack of confidence") was neither plausible nor reasonably specific.

ARGUMENT II - THE CONCLUSIONS OF LAW BY THE DISTRICT COURT WERE CLEARLY ERRONEOUS

1. The District Court's "conclusion of law" at paragraph 4 "(that the hiring decision was made before plaintiff's resume was received, and therefore was not considered)" is not supported by the facts in the case. In fact the court did not establish when petitioner's application was received by the respondents. More importantly, the district Court conveniently ignored the fact that the person hired was not listed by the employer as one of the applicants for the position. Also, the District Court conveniently ignored the

deposition testimony of Respondent Benson, who testified that the minority applicants received were not qualified. See page 23 of Benson's deposition:

"A (Benson) "One of the things that I did was at the Gongress on Administration, I contacted an organization that sponsored minority candidates. ... We corresponded some and they sent me some resumes that went through the process of review and so forth.

"Q. Did you -- you did not hire any of those minorities?

"A (Benson) No, No.

"Q Because you did't consider them to be qualified?

"A (Benson) They were not qualified."

2. The District Court's decision that the respondents articulated a legitimate nondiscriminatory reason for terminating the petitioner's employment when it stated he was fired because of a "lack of confidence", when clearly erroneous and a clear abuse of

discretion. The reason (lack of confidence) clearly did not meet this Court's "reasonably specific" standards articulated in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981).

3. The District Court's decision at paragraph 6 "that plaintiff likewise did not meet his burden of proving the retaliatory discharge claim" conveniently ignored petitioner's primary claim, and that is his employment was terminated on December 16, 1980 AFTER he declined to withdraw EEOC Charge No 0527917858 during his meeting with Ms Barbara Morgan on or about November 15, 1980. Also, the District Court's allegation that "The existence of plaintiff's "failure to hire" discrimintion charge was known when plaintiff was hired as Superintendent" is not supported by the testimonies of record in the case. Some examples:

a. Timothy Moritz's deposition testimony, page 10:

"Q. At this point in time in the fall of 1979 when the selection of superintendent was made, did you know that Mr. Wrenn had filed charges of discrimination against the Department? Or any of its institution?
"A. I am almost certain that I was not aware of it at that time."

b. Donald E. Widmann's deposition testimony, p. 44:
"Q. Doctor, did you know at the time that you hired Mr. Wrenn that he had filed this charge of discrimination against the Toledo Mental Health Center?
"A. To the best of my knowledge, I was not aware of it, as I previously testified."

c. Paul Guggenheim's testimony, page 58:
"Q. At this point in time, prior to Mr. Wrenn's termination as superintendent at Toledo Mental Health Center, did you have any knowledge that he had filed a claim of discrimination or a charge of discrimination?

"A. No."

d. Barbara Morgan's testimony, p.6:

"Q. Isn't it a fact you were aware of the first charge of discrimination at the time that Mr. Wrenn was working as superintendent?

"A. No.

"Q. You were not aware of that charge at all?

"A. No."

e. Roger Murray's testimony, p.97:

"Q. Mister Murray, at any time during Mr. Wrenn's tenure, did you have knowledge that he had filed a charge of discrimination against the Ohio Department of Mental Health?

"A. No I didn't."

ARGUMENT III _ FAILURE TO HIRE CLAIM

1. This case centers around the clearly erroneous findings of facts and an erroneous interpretation of the law by the District Court. The latter has do with a misinterpretation of this Court's decisions, i.e., McDonnell Douglas v. Green, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824, 36 L.Ed.2d 668 (1973); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-56, 101 S.Ct. 1089, 1093-95, 67 L.Ed.2d 207 (1981).

2. Petitioner submits that a review of the evidence and records in this case will demonstrate that this case falls within the teaching of Pullman Standard v. Swint, 456 U.S. 273, 287-90, 102 S.Ct. 1781, 1789-91, 72 L.Ed.2d 66 (1982), in that the lower courts committed an error of law in failing to consider relevant admissible evidence with respect to the motive of the employer for its action. In this case the courts failed to consider that the petitioner submitted proof of discrimiantion by showing

that he applied for vacant positions which the employer was seeking applicants; he met the stated requirements for each position (one of which was the position at issue, namely Assistant Superintendent of Programs); but despite his qualifications he was not interviewed nor hired, and a younger less qualified white male who was not an applicant was hired.

3. The District Court, in an apparent attempt to support its findings that there was no discrimination, has alleged:

a. The employer was not aware of petitioner's race. The court conveniently ignored the deposition testimony of Benson who alleged he found no qualified minorities.

b. The employer had filled the position. The court failed to "find" when the position was filled or when petitioner's application was received. Moreover, the court conveniently ignored the fact that the

petitioner submitted two applications for the same position.

4. In summary, the petitioner submits that he established a prima facie case of racial discrimination by demonstrating that he was a member of a minority and that he was treated differently than similarly-situated whites. In this case, Respondent Benson had contacted NAHSE to apparently to obtain qualified minority applicants. The petitioner applied but was not interviewed nor hired. Contrary to the District Court the employer submitted no evidence to demonstrate why the petitioner was not hired. This fact is especially significant considering that the person hired was not included as one of the candidates for the position by the employer.

ARGUMENT IV - RETALIATION CLAIM

1. The petitioner submits for the Court's consideration that the reason for his discharge was retaliaiton for his

"protected activities", including but not limited to his refusal to withdraw EEOC Charge No 052791758; his attempt to place the mentally ill in a less restrictive environment (App D); and because he advocated equal treatment for other employees (App E). The employer's intent to discriminate and its retaliatory motivation are demonstrated by the non-specific reason given by the employer for terminating the petitioner's employment.

2. The "nexus" demonstrating a connection between petitioner's protected activities and the unlawful discharge is demonstrated by Appendices D-H. The series of events leading up the discharge of the petitioner were not rebutted by the employer. The employer refused to offer ANY explanation for the petitioner's discharge other than "lack of confidence." In addition, the employer's attempt to have the petitioner withdraw his EEOC charge No 052791758 was an attempt to condition his

continued employment on a basis that infringed the petitioner's constitutionally protected interest in freedom of expression. See, e.g.. Keyishian vs Board of Regents, 385 U.S. 589, 605-06, 87 S.Ct 675, 684-85, 17 L.Ed.2d 629 (1967).

3. Petitioner's expressions at App D and E were based on ideas which were of legitimate public concern. A public employee, as in this case, may not be discharged for the expression of ideas on any "matter of legitimate public concern", such as equal pay and the humane treatment of the mentally ill. See, e.g., Pickering v. Board of Education, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968); Givhan vs. Western Line Consolidated School District, 439 U.S. 410, 99 S. Ct. 693, 58 L.Ed.2d 619 (1979).

4. Based on the foregoing, the clear weight of the evidence is that petitioner engaged in "protected activity", that the responsdents were aware of that fact, and

that he was terminated shortly after his involvement in such protected activity with both the person who fired him (Widmann) and with the EEO Manager (Barbara Morgan). Thus, petitioner has established an entitlement to relief under the anti-retaliation provisions of title VII.

5. Further, petitioner has established his prima facie case of racial discrimination under Title VII by his showing that he is a member of a protected group, was discharged, and was replaced by a caucasian. See, e.g., McDonnell. Thus, unless the respondents have met their burden of articulating a legitimate, non-discriminatory reason for the discharge, petitioner should also prevail on his claims of "original" discrimination on the basis of race discrimination in employment.

6. At the time of plaintiff's discharge, he was given absolutely no reason for his removal (See, Joint Exhibit VIII at pages 1, 2). Indeed, until the development

of the evidence for the trial of this matter, aside from rather damaging and unsupported statements reported in the Media (App G, I and J), the sole reason ever give for the petitioner's discharge was the nebulous rationale of "lack of confidence".

7. It is undisputed that there was absolutely no documentation of petitioner having done anything but an exemplary job as TMHC Superintendent. The respondents have been unable to produce a single document wherein petitioner was sanctioned, reprimanded, or otherwise documented as having any employment performance difficulties or problems. In point of fact, as described by Frank Pitt (a retired attorney-at-law who served on the Citizen Advisory Board (the State oversight board) at the time of plaintiff's tenure as Superintendent) petitioner's performance was professional, competent, and effective.

8. Under the standards enunciated by this Court in Burdine, although the respon-

dent need not "prove" that its apparently discriminatory conduct was actually the result of a legitimate, non-discriminatory reason, it must establish through the introduction of admissible evidence what that reason was. What then were the purported reasons finally advanced by the respondents during trial for plaintiff's employment termination? Those four specific supposed articulated reasons, as discussed following seriatim, were: (a) Petitioner's hiring of a Dr. Rabb as Acting Medical Director; (b) Petitioner's "revealing" to the Office of the Auditor of the State of Ohio that a person not working at TMHC was on its payroll; (c) Petitioner's efforts to discharge patients to community mental health care facilities; and (d) Petitioner's suggestion to the CAB of an option available to it in its oversight capacity to initiate certain litigation against the Department on behalf of the mentally ill.

9. The Hiring of an Acting Medical Director. The first attempted "articulation" of some reason to justify plaintiff's termination was his hiring of a licensed physician, one Dr. Raab, to serve as an "Acting" Medical Director at TMHC during the time that post remained empty. It is patent that this supposed "wrongdoing" was the only appropriate and legal action to be taken by petitioner while that post remained unfilled and a search for a permanent Medical Director was ongoing. The term "head of hospital" as defined in Ohio Revised Code Section 5122.01(K) requires a duly licensed physician who, as to the organization at TMHC, would be called a "Medical Director". Pursuant to Ohio Revised Code Sections 5122.02, 5122.03 and 5122.05 it is only such a duly licensed physician who can legally admit or discharge patients. Accordingly, the interim hiring of Dr. Rabb was not only appropriate conduct by petitioner, but indeed was a necessary

decision for petitioner to make in order that TMHC could legally operate. For the respondents to now suggest that petitioner's taking appropriate action under the law was somehow a "wrongdoing" is simply ludicrous, and constitutes but a pretext for its illegal termination of petitioner of Superintendent of TMHC.

10. Report to the State Auditor. The respondents next seek to justify the decision to terminate petitioner because he "reported" to the Office of the Auditor of the State of Ohio, during an audit of the books of TMHC that a person was on the payroll of that institution without actually working there. This attempted defense "articulation" relates to petitioner's responding to an inquiry from the State Auditor with an honest answer that there was one such person, A Chris Roberts (ironically, the person who replaced plaintiff as Superintendent). See, Defendant's Exhibit 4 to Deposition of Dr.

Widmann. Once again, it is impossible to fathom how from this incident respondents can attempt to articulate a legitimate non-discriminatory reason for petitioner's discharge. Indeed, had petitioner, as an employee of the State of Ohio, refused to cooperate with a legitimate inquiry from a duly constituted state agency, such lack of cooperation would constitute such a legitimate reason. To suggest that petitioner's discharge can be justified legitimately for such conduct is absurd.

11. Efforts to Discharge Patients. The respondents next attempted to criticize petitioner's efforts to discharge mental patients from TMHC by placing them in a less restrictive environment, i.e., primarily into community mental health care. Not only is this purported articulation merely a pretext for illegal Title VII discrimination in petitioner's discharge, but it is also violative of petitioner's rights guaranteed to him by the U.S. Constitution and a viola-

tion of 42 USC Section 1983. It is clear that one does not, by virtue of their public employment, lose their rights in the employment context to freedom of expression as guaranteed by the First and Fourteenth amendments to the U. S. Constitution. See, e.g. Givan. It is equally clear that one may not legally retaliate against another for exercising such constitutionally protected and guaranteed rights. See, e.g., Perry v. Sindermann, 408 U.S. 593 (1972). Perhaps most significantly, this Court has held that where an employee shows that his constitutionally protected conduct played a "substantial" part in his termiantion, the employer must then show "by a preponderance of the evidence that it would have reached the same decision as to (the employee's termination or re-employment) even in the absence of the protected conduct. See, e.g., Mt. Healthy City Bd. of Education v. Doyle, 429 U.S. 274, 287 (1977). Courts in the other circuits have

held that the U.S. Constitution requires that mental patients be placed for treatment in the least restrictive appropriate treatment environment, and that this constitutional principle was recognized at the time of petitioner's tenure at TMHC. See e.g., Covington v. Harris, 419 F.2d 617 (D.C. Cir., 1969); Wyatt v. Stickley, 344 F. Supp.373 (M.D. Ala., 1972), aff'd. sub nom. Wyatt v. Anderholt, 503 F.2d 1305 (5th Cir., 1974). See, also, Justice Burger's concurring opinion in O'connor v. Donaldson, 422 U.S. 563.

12. The Suggestion of Litigation. Murray testified that one of the reasons for his suggestion to Widmann that petitioner be terminated was the petitioner's suggestion to the CAB that they could bring suit against the Department regarding the matter of discharging TMHC patients into the less restrictive environment of Community Mental Health Care. As with petitioner's pro-

tected First Amendment activity directly involving such discharge, his suggestion to the CAB of that litigation option was activity protected by the guarantees of the First and Fourteenth Amendemtns. Further, that lawful and constitutionally protected conduct cannot be found to be a legitimate reason for his discharge. That failure to articulate such a legitimate reason, along with respondents' failure to demonstrate that without that activity petitioner would have been discharged in any event, gives rise to violations of petitioner's rights as secured by Title VII, and by the U. S. Constitution.

13. Buttressing petitioner's establishment of entitlement to relief are the findings of the EEOC. Although admittedly not binding determiantions, such determinations are to be given such probative weight and deference to be accorded such findings as the Court shall determine to be appropriate. See, e.g.,

Plummer v. Western International Hotels, Inc., 26 FEP 1292 (9th Cir., 1981); Blizzard v. Fielding, 17 FEP 149 (1st Cir., 1978).

CONCLUSION

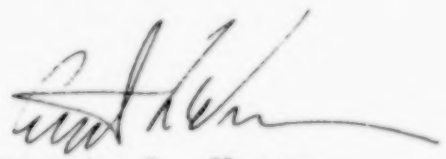
Based on the foregoing, it is respectfully submitted that petitioner has established his right to relief for failure to hire and retaliatory discharge, under both 42 USC 2000e et seq and 42 USC 1983 (the latter based, in part, on respondents' own admissions that petitioner's discharge was motivated by his First Amendment protected activity). Accordingly, this Court should remand this case for a new trial before the United States District Court.

Respectfully submitted,

Curtis L. Wrenn. Pro Se

CERTIFICATE OF SERVICE

I certify that a copy of this petition was mailed to the Attorney General State of Ohio via certified mail, returned receipt requested, P669602671.



Curtis L. Wrenn

IN THE

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OCTOBER TERM, 1988

NO 88-6494

CURTIS L. WRENN
P. O. Box 203
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Toledo, Ohio

Respondent.

PETITIONER'S APPENDICES

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APPENDIX A

Excerpt From Judgment in Case No. C 81-571 United States District Court

FINDINGS OF FACT

3. Beginning in approximately August, 1978, TMHC advertised an opening for the position of Assistant Superintendent of Programs. Although earlier placed advertisements continued to run through January, 1979, TMHC announced at the end of December, 1978 that the Assistant Superintendent of Programs position was filled, effective January 22, 1979. Plaintiff did not apply for the Assistant Superintendent of Programs position until December 26, 1978. Plaintiff had not been in the pool of prospective applicants whose resumes were considered and he was notified by letter dated January 30, 1979 that he had not been hired.

4. As a result of not being hired as Assistant Superintendent of Programs, plaintiff filed charge number 052791758 in

February, 1979 with the ... Equal Employment Opportunity Commission ("EEOC") against TMHC for race-based employment discrimination.

5. In August or September, 1979, plaintiff applied at TMHC and was interviewed for the position of Superintendent. ... plaintiff was appointed on November 29, 1979 as Superintendent of TMHC, effective December 17, 1979.

6. After plaintiff's acceptance of the Superintendent position, charge number 052791758 was treated as a conciliation and dismissed.

8. Plaintiff served as Superintendent for about one year. Plaintiff worked during that time to achieve cost containment as to overtime pay and staffing and to maintain accreditation.

9. On December 16, 1980, Widmann, after discussions with Dr. Moritz, notified plaintiff that he was terminated. The basis for termination was Widmann's loss of trust and confidence in plaintiff's ability to

carry out his duties as Superintendent. Widmann lost confidence in plaintiff after reports from and discussions with plaintifff's immediate supervisors, Paul Guggenheim and Roger Murray. ... At two different meetings in 1980, plaintiff threatened immediatge discharge into the community of 150-200 patients, though the community lacked resources for sufficient aftercare.

CONCLUSIONS OF LAW

4. The Court finds that plaintiff cannot establish a prima facie case on his first claim of discriminatory refusal to hire him as Assistant Superintendent of Programs. ... (that the hiring decision was made before plaintiff's resume was received, and therefore was not considered)

5. The Court also finds that plaintiff failed to prove his claim of discriminatory termination from his position as Superintendent at TMHC. As an unclassified

employee, plaintiff served at the will of the appointing authority.

6. Finally, the Court finds that plaintiff likewise did not meet his burden of proving the retaliatory discharge claim. ... the existence of plaintiff's "failure to hire" discrimination charge was known when plaintiff was hired as Superintendent. This prior knowledge negates the charge of retaliation in discharge.

APPENDIX B

Excerpt From Order Sixth Circuit Court of Appeals of February 4, 1988

Based on the testimony and exhibits presented at that trial, the district court found that the plaintiff failed to: establish a prima facie case of discriminatory failure to hire; prove that the legitimate reasons advanced for his charge were mere pretext; and establish a prima facie case of retaliatory discharge.

Accordingly, the judgment of the district court was entered on February 5, 1987, is affirmed for the reasons set forth therein.

APPENDIX C

Excerpt from Order of the Sixth Circuit Court of Appeals of November 4, 1988

After careful consideration of the motion for counsedl and the petition for rehearing, the panel concludes that it committed no misapprehension of law or fact in its order of February 4, 1988.

APPENDIX D

Excerpt From Petitioner's Letter of October 20, 1980 to Roger A Murray II, Acting Manager Districts 3,4 and 5

Dear Mr. Murray:

A few days ago I reviewed the contractual agreements for aftercare between the Community Mental Health Centers and Toledo Mental Health Center for patients discharged from the latter. During this review it became quite evident that the Community Mental Health Centers are not in compliance with parts of that agreements. Particular reference is made to the section dealing with the use of "507" aftercare funds. Though these funds have been allocated and stipulations regarding their use have been promulgated by the Department of Mental Health, they have not been utilized to an appreciable degree by most of our Community Mental Health Centers. We are still experiencing difficulties in discharging patients due to the lack of appropriate community-based facilities and/or services.

We are concerned about the dehumanization of our patients caused by the inappropriate continued hospitalization when in fact they should be discharged. Moreover, there are legal ramifications for falsely imprisoning patients at Toledo Mental Health Center who should be residing in an alternative environment.

We would like to meet with you November 25, 1980 at Toledo Mental Health Center in the Basement Conference room at New Receiving Building from 9: a.m. to 12:00 p.m. At this time we will jointly determine our next course of action, including whether the current agreements should be modified or terminated.

We look forward to seeing you on November 25, 1980.

Sincerely,

/s/ Curtis L. Wrenn
Superintendent

APPENDIX E

Excerpt From Petitioiner's Letter of

November 13, 1980 to Donald E Widmann,

Commissioner

SUBJECT: Age Discrimination Complaint filed

against Toledo Mental Health

Center

One of our staff members within the EEO classification of Professional A has filed a complaint alleging discrimination in pay increases based on age. This employee is classified as a Psychiatrist.

Essentially, the employee's claim is that newly graduated Physicians and Psychiatrists, with little or no experience, were hired at Toledo Mental Health Center during the years 1977, 1978, and 1979 at rates of pay far in excess of the salary drawn by the complainant who has in excess of 20 years service in the field.

The EEO Officer at Toledo Mental Health Center has conducted a review of the facts and has given the complainant a finding of probable cause that discrimination based on age did occur.

I am requesting that you advise me regarding the appropriate decision regarding this matter. The complainant may be able to make a back claim award in the neighborhood of $20,000. In light of our budget constraints, this would work a grievous hardship on our responsibility to live within our budget. Additionally, it appears that this individual was denied the pay raises/increases/supplements in capricious, arbitrary fashion. Under certain circumstances, a complainant can go beyond

the veil of the government entity status and sue responsible state officials in an individual capacity.

Please review the facts outlined above and respond with your recommendations or those of others by November 26, 1980.

APPENDIX F

Excerpt From Respondents' Letter of November 17, 1980 to Ohio Civil Rights Commission

Dear Mr. Spitzer:

In response to our telephone conversation, I discussed this case with Barbara Morgan, Manager of the Department's Central Office EEO Section. Ms. Morgan in turn discussed the case with Mr. Wrenn. This is to inform you that the Department has attempted to conciliate the complaint, but conciliation is not possible for the reasons set forth below.

In my opinion this case is moot for two reasons: (1) no backpay award is possible for the period in question; (2) assuming, without admitting, that a discriminatory act occurred in denying Mr. Wrenn the position of Assistant Superintendent, that act was remedied by the appointment of Mr. Wrenn as Superintendent. I believe the complaint should be dismissed as moot on this basis.

Very truly yours,

/s/ Richard M. Epps, Chief
Office of Legal
Services

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APPENDIX G

THE BLADE
TOLEDO, O.
D/M&SUN - CIRC. 206,400

DEC- 2-80

Cost-Cutting Program Under Way At TMHC

Wrenn Estimates Methods Will Save Center $1.2 Million

The superintendent of the Toledo Mental Health Center says he has utterly amazed the state by voluntarily instituting a cost-cutting program that he estimates will save $1.2 million during the current fiscal year.

Curtis Wrenn said the "cost containment" program saved the center $585,000 in the first three months of this fiscal year, which runs from July 1 to June 30, 1981. The center's budget for the year is $15.7 million.

Mr. Wrenn claims care for the center's 430 patients has not been adversely affected and said the program has resulted in an increase in productivity.

Although the program has been approved by the state department of mental health, the state did not mandate the program. Mr. Wrenn said he started looking for methods to cut costs because "hospitals are notoriously undermanaged."

Fifty executives and department heads at the center participated in a seven-week management program focused on cutting costs and increasing efficiency. Ronald Galdys, TMHC training director, acknowledging cost-cutting measures at TMHC said that the department welcomes any sensible budgeting program.

Other state institutions have been encouraged to study the center's cost-cutting program, which was developed by the American Hospital Association and meets hospital standards, he said.

Since July 1, the state has cut the department's budget 12 per cent, Mr. Roberts said. For that reason, mental health officials endorse saving measures.

"The specific program is at the discretion of the superintendent — especially in the fiscal crisis we are in now," Mr. Roberts said.

He said the Toledo center must continue to meet staffing and care standards set by the Joint Commission on Accreditation of Hospitals. The center recently was accredited for one year.

Mr. Roberts said the state constitution requires the department of mental health to balance its budget and that any saving has to be distributed to deficit areas.

"All we look at is whether an institution is overbudgeted or underbudgeted, and the Toledo Mental Health Center is in the black," Mr. Roberts said.

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December 20, 1980

Mr. Curtis L. Wrenn
c/o Toledo Mental Health Center
Caller # 43699— 10002
Toledo, Ohio 43699

Dear Mr. Wrenn:

I am writing in response to your request for a written list of reasons for my having relieved you of responsibility as Superintendent of the Toledo Mental Health Center, and for my notice to you of my intent to revoke your unclassified appointment.

The reason for your removal was a lack of confidence in you and your administration of the Toledo Mental Health Center.

In addition, I am responding to your letter of December 18th. It is my understanding that arrangements have been made by the Acting Superintendent to allow you access to your former office so that you may remove your personal effects.

You have seven days from the receipt of this statement of reasons to request an informal meeting to discuss the reason for removal.

Yours very truly,

Donald E. Widmann

dew:w

Donald E. Widmann, M.D.
Commissioner, Mental Health

cc: Timothy B. Moritz, M.D.,
Director

APPENDIX H

MFR: RECEIVED AT 12:40 PM, 12-23-80.

TMHC Superintendent Is Relieved Of Duties

State Commissioner Says High Overtime Pay Among Reasons

Curtis L. Wrenn, superintendent of the Toledo Mental Health Center for the last year, Tuesday was relieved of his duties because of his "managerial performance," Dr. Donald Widmann, commissioner of the Ohio department of mental health, said today.

Dr. Widmann cited high overtime pay as one of the problems at the Toledo center, but said it was only part of the overall picture.

"It was a combination of things. They happened to come out highest on the overtime scale, but it was really a combination of factors."

Chris Roberts, former TMHC assistant superintendent, has been appointed acting superintendent. For the last 18 months, he has been special assistant to Dr. Widmann.

The commissioner said the decision to replace Mr. Wrenn was part of the department's policy of continuous reviews of the performance of persons in top management.

Elliot Jones, superintendent of the Rome Psychiatric Institute in Cincinnati, also was replaced.

Mr. Wrenn said this morning that he had met with Dr. Widmann Tuesday for the first time since assuming the superintendency.

"I have never had a performance evaluation. I have not met with any state official to discuss my performance," he said.

Mr. Wrenn said he was given other reasons for the change, but declined to say what they were.

Earlier this month, Mr Wrenn announced managerial changes at TMHC that he said he instituted that saved the state $1.3 million. He had said that he was able to do so because "hospitals are notoriously undermanaged," and that the changes were made without adversely affecting patient care.

But Al Dopking, public relations director for the department, said state officials were "not sure Mr. Wrenn's figures were correct."

Mr. Dopking said this morning that TMHC had the highest ratio of overtime pay of any center, despite firm orders by the commissioner to hold overtime to a minimum.

Dr. Widmann said today that he believes it would be unconscionable to lay off employees in lower echelon jobs without reviewing the top jobs also.

He also said he does not envision any other immediate changes here.

Obviously, he said, the decisions made by the state legislature regarding the tax increase and budget cutting proposals of Governor Rhodes will have an impact on the mental health department, but that this cannot yet be measured.

The mental health center here has about 450 patients with emotional and mental disorders.

Mr. Wrenn took over as superintendent Dec. 16, 1979. He replaced Dr. Jankiel Barg, who had served as acting superintendent for 18 months after Lawrence Rennco resigned in the wake of a Ohio state patrol investigation into a "superintendent's fund."

A Lucas County grand jury later found no evidence of wrongdoing in its investigation of the fund which was administered apart from normal state channels.

APPENDIX I

FRIDAY, DECEMBER 19 1980

State Keeps Quiet About TMHC Firing

Ousted Director Awaits Reasons For Dismissal

State mental health officials Thursday continued to decline comment about the recent firing of Curtis Wrenn as superintendent of the Toledo Mental Health Center.

Mr. Wrenn said that he did not want to discuss his dismissal until he was given a written list of the reasons for the unexpected action.

"I cannot respond to questions because I have not been made privy to any information," he said Thursday.

Dr. Donald Widmann, state mental health commissioner, also declined to elaborate about Mr. Wrenn's firing, but said Mr. Wrenn is not being considered for any other state mental health position.

"I think it fair to say it's either that job (as superintendent) or none," Dr. Widmann said.

He said Mr. Wrenn will remain on the payroll another week or two.

He said the reason for Mr. Wrenn's dismissal was "fatal job performance," adding that "the statewide budget problems just lent greater urgency to the critical review."

Chris Roberts, the former assistant superintendent who was named acting director, declined comment.

Dr. Widmann said he was unsure how long Mr. Roberts would remain in an acting capacity, but said, "We have not initiated a search committee for a new superintendent." He said the state's fiscal woes will have to be sorted out before the position is filled.

Mr. Wrenn can appeal his dismissal only "if he can demonstrate malfeasance," Dr. Widmann said.

Mary Jane McCormick, chairman of the citizens advisory board that monitors operations of TMHC, said Thursday that she was surprised by the state's action.

"We were very disappointed, we thought he was an excellent administrator," she said.

APPENDIX J

04 - Assistant Superintendent-Programs

Leo W. DeMers
2165 S.W. 23rd Avenue
Fort Lauderdale, FLA 33312

William Boerum
Box 1132
Janesville, WI 53545

Jeff Epstein, Ph.D.
3029 Corrib Drive
Tallahassee, FLA 32308

William J. Williams, III
5 Hilltop Drive
East Greenwich, RI 02818

Robert C. Patterson
P. O. Box 181
Fort Meade, SD 57741

Leon E. Dietschweiler
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Walnut Creek, CA 94598

Michael P. Peters
Broadway Road
Gowanda, NY 14070

James E. Schoenfelder
SunBrook Manor #206
Third Avenue & Nineth St.
Duncansville, PA 16635

Phillip M. Peterson
10 Philanne Dr.
Norwich, CT 06360

Thomas L. Qualey, Jr.
3417 Duhon St.
Lake Charles, LA 70605

Paul J. DeFino
G.C.P.O. Box 2177
New York, NY 10017

APPENDIX

Ned J. Miller, MHA
404 Habkirk Drive
Regina, Saskatchewan
Canada S4S6B1

FROM DEFENDANT'S EXHIBIT #12

James E. Grice, MHA
5636 Graber Drive
Fort Wayne, IN 46815

Vince Papaccio
11 Bethel Street
Wilmington, DE 19803

Paul H. Dude
33 Shadowmoor
Fairport, NY 14450

Cynthia B. Holmes
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Stephen W. Bocskocsky
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Chatham, MA 02633

Alex T. Dukay, MSW
3583 Pheasant Run #7
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Curtis L. Wrenn
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Jere R. Hoffner
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Malcolm E. Kafka, MPA, FAPHA
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Flushing, NY 11365

Ronald B. Sage
2471 Fair Lane
Burton, MI 48509

Herbert W. O'Rourke
1568 Chat Court
Naperville, IL 60540

APPENDIX L

February 16, 1988

Chief Judge
United States Court of Appeals
Sixth Circuit
U. S. Post Office & Courthouse Building
Cincinnati, OH 45202

Dear Judge:

Enclosed please find a copy of pages 6 and 7 of a pleading filed by the defendants in the U.S. Court of Appeals for the D. C. Circuit, in the case of Wrenn v. VA, Case No 86-5325.

My reason for sending this to you is to bring to your personal attention several concerns which I have:

(1) I have reviewed my files pertaining to EVERY case which I have filed against Gould (the Cordelia Martin Health Center) and have not found ANY such decision as cited by the defendants in the above case. For this reason, I respectfully request that a copy of the cited decision be mailed to me as soon as possible.

(2) The allegations contained in the cited decision are NOT based on any decisions and/or pleadings which I have from the United states District Court for the Northern Distrct of Ohio, in any case involving Wrenn v. Gould. My chief concern, however, has to do with the wording contained in the cited decision. I am left with the distinct impression that the decision reflects the influence of the United States Department of Justice. Although Justice is not a defendant or acting in the capacity of legal counsel for

the defendants in the Gould case, I am aware, however, that that Department represents the U. S. Department of Health and Human Services which provides the primary financial support for the Cordelia Martin Health Center. The idea which has occurred to me is a very distasteful one, and that is that the Justice Department has exerted influence in a court of appeal as part of its continuing efforts to discredit me because of my opposition to unlawful employment practices and the underfunding of health care for Blacks. You are respectfully requested to compare the wording in the Gould case with an unfounded allegation made against me by the U. S. Department of Health and Human Services. Please note especially that DHHS initially steadfastly denied that ANY such allegation had been made, and later declined to provide the requested information after I was successful in obtaining bits and pieces of information from anonymous sources in responses to my paid advertisements. Appendix A is enclosed for your perusal. This appendix reflects my efforts to obtain information under the Freedom of Information Act, in an attempt to clear my name and to vindicate my civil and constitutional rights.

(3) I am becoming increasingly concerned about the recurring use of unsupported facts by this Court to support adverse decisions against me. I sincerely believe the decisions by this Court are racially motivated by my race (Black) and retaliation (because of my opposition to employment practices made unlawful by the Constitution and laws of the United States.) I respectfully invite your attention to Docket No 86-3131 (Wrenn v. Gould) where the Court stated, without any facts whatsoever, that I had voluntarily dismissed an age discrimination claim, while knowing not only was the statement false but apparently was blatantly and maliciously made to stigmatize

me so as to encourage other courts to render similiar adverse decisions. I also invite your attention to other unsupported allegations used by the Court to render adverse decision. Please note the following cases which I have filed petitions for rehearing: 87-3276/77, 87-3437, and 87-3246, 87-3263.

(4) Regarding the cited Gould case. My chief concern has to do with the Court's unsupported allegation "His numerous unfounded civil rights challenges ..." The allegation having been made despite the absence of ANY supporting documentation in the case from the District Court. This Court AND the District Court are acutely aware that the EEOC rendered "probable cause" in at least fourteen charges filed by me in the State of Ohio. Is it this Court's contention that the filing of lawsuits in each of those cases, after both the EEOC and Justice Department refused to initiate legal action against the public or private employer to vindicate my civil rights, is an example of filing unfounded "civil rights challenges?" Also, is it this Court's contention that when the EEOC refuses to take action to process and/or investigate a charge (this Court has been made aware of the many examples of such by me), that a person, such as myself, does not have the right to file legal action against the wrongdoer to vindicate his civil rights? Or is it the contention of this Court that it is alright for ANYONE but Curtis L. Wrenn to oppose unlawful employemnt practices by filing lawsuits?

In that connection, I respectfully call your attention to the fact that I have been denied employment as an administrator in the profession of hospital and health care administration, as a result of a nationwide effort orchestrated by present and former employees of the Ohio Department of Mental Health, the U. S. Department of Justice, and

public and private employeers acting in concert with them. The concerted nationwide efforts to deprive me of rights, privileges, and immunities secured by the Constitution and laws of the United States have been fully documented in this Court. However, if I am to believe the Gould case, this Court has deliberately refused to consider the facts before it in order to discredit me, my good name and reputation. In addition, this Court is apparently trying to persuade me not to seek legal redress against those who have denied me employment and the opportunity to pursue my chosen profession. I find this to be extremely disconcerting because this Court nor ANY OTHER court can so persuade me, but it surely will persudae others after they are made aware of the price which I have had to pay for pursuing justice and equal rights.

Based on the foregoing, I respectfully request, pursuant to the Freedom of Information Act if appropriate, that I be provided a copy of the Gould case including the date of issuance.

I am by a copy of this letter requesting the clerk of your Court and the clerk of the Toledo District Court to provide me with a copy of any and all documents compiled in the Gould case.

Vedry truly yours,

/s/
Curtis L. Wrenn

CERTIFIED MAIL P541589816

"I CERTIFY THAT THE FOREGOING IS A TRUE AND COMPLETE TYPED COPY OF THE ORIGINAL."

Date: 3/11/88

Curtis L. Wrenn, Pro Se

SUPREME COURT OF THE UNITED STATES

88-6494 (3) CURTIS L. WRENN
v.
LAWRENCE P. BENSON ET AL.

88-6497 (3) CURTIS L. WRENN
v.
DEPARTMENT OF MENTAL HEALTH OF OHIO

ON MOTIONS FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Nos. 88-6494 AND 88-6497. Decided April 17, 1989

PER CURIAM.

On March 27, 1989, we denied *pro se* petitioner Curtis Wrenn's request to proceed *in forma pauperis* under this Court's Rule 46 in filing petitions for certiorari in *Wrenn* v. *Benson* and *Wrenn* v. *Ohio Dept. of Mental Health*, 489 U. S. ——. Since October Term 1986, petitioner has filed 22 petitions for certiorari with the Court. We denied him leave to proceed *in forma pauperis* with respect to 19 of those petitions, and he paid the docketing fee required by this Court's Rule 45(a) on one occasion.[1] He also filed one petition for

[1] See *Wrenn* v. *Benson* and *Wrenn* v. *Ohio Dept. of Mental Health*, 489 U. S. —— (1989) (IFP status denied); *Wrenn* v. *New York City Health and Hospitals Corp.* and *Wrenn* v. *United States District Court*, 489 U. S. —— (1989) (same); *Wrenn* v. *Thornburgh*, 488 U. S. —— (1989) (same); *Wrenn* v. *Bowen*, 488 U. S. —— (1989) (same); *Wrenn* v. *Commissioner*, 486 U. S. —— (1988) (same); *Wrenn* v. *Gould*, 484 U. S. 1067 (1988) (paid docketing fee required by this Court's Rule 45(a) and submitted petition in compliance with Rule 33); *Wrenn* v. *Gould*, 484 U. S. 961 (1987) (IFP status denied); *Wrenn* v. *Board of Directors, Whitney M. Young, Jr., Health Center, Inc.*, and *Wrenn* v. *Bowen*, 484 U. S. 894 (1987) (same); *Wrenn* v. *Capstone Medical Center*, 483 U. S. 1008 (1987) (same); *Wrenn* v. *Weinberger*, 481 U. S. 1047 (1987) (same); *Wrenn* v. *Christian Hospital NE-NW*, 479 U. S. 1061 (1987) (same); *Wrenn* v. *McFadden*, 479 U. S. 1028 (1987) (same); *Wrenn* v. *Ohio Dept. of Mental Health*, 479 U. S. 1016 (1986) (same); *Wrenn* v. *Ohio Dept. of Mental Health*, 479 U. S. 981 (1986) (same); *Wrenn* v. *Missouri*, 479 U. S. 981 (1986) (same); *Wrenn* v. *Ohio*

rehearing.[2]

This Court's Rule 46.1 requires that "[a] party desiring to proceed in this Court *in forma pauperis* shall file a motion for leave to so proceed, together with his affidavit in the form prescribed in Fed. Rules App. Proc., Form 4 . . . setting forth with particularity facts showing that he comes within the statutory requirements." Our decision to deny a petitioner leave to proceed *in forma pauperis* is based on our review of the information contained in the supporting affidavit of indigency.[3] In petitioner's case, a review of the affi-

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Dept. of Mental Health, 479 U. S. 928 (1986) (same); *Wrenn* v. *Ohio Dept. of Mental Health*, 479 U. S. 809 (1986) (same); *Wrenn* v. *St. Charles Hospital*, 477 U. S. 907 (1986); *Wrenn* v. *Walters*, 475 U. S. 1128 (1986).

[2] *Wrenn* v. *Gould*, 485 U. S. —— (1988).

[3] The Clerk of the Court provides the following Form 4 affidavit to those who seek assistance in drafting *in forma pauperis* papers:

"I, [John Doe], being first duly sworn, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and that I believe I am entitled to redress.

"I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

"1. Are you presently employed?

"a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

"b. If the answer is no, state the date of your last employment and the amount of salary or wages per month which you received.

"2. Have you received within the past twelve months any income from a business, profession, or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources?

"a. If the answer is yes, describe each source of income and state the amount received from each during the last twelve months.

"3. Do you own any cash or checking or savings account?

"a. If the answer is yes, state the total value of the items owned.

"4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

davits he has filed with his last nine petitions for certiorari indicates that his financial condition has remained substantially unchanged.[4] The Court denied him leave to proceed *in forma pauperis* with respect to each petition. Petitioner has nonetheless continued to file for leave to proceed *in forma pauperis*.

In *In re McDonald*, 489 U. S. ——, —— (1989), we said that "[e]very paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice." We do not think that justice is served if the Court continues to process petitioner's requests to proceed *in forma pauperis* when his financial condition has not changed from that reflected in a previous filing in which he was denied leave to proceed *in forma pauperis*.

"a. If the answer is yes, describe the property and state its approximate value.

"3. List the persons who are dependent upon you for support and state your relationship to those persons.

"I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury."

[4] See *Wrenn* v. *Benson* and *Wrenn* v. *Ohio Dept. of Mental Health*, 489 U. S. —— (1989) ($2,309.67 per month in salary; $46 in cash; $72,000 home; $250 savings bond; 4 dependents); *Wrenn* v. *United States District Court* and *Wrenn* v. *New York City Health and Hospitals Corp.*, 489 U. S. —— (1989) ($1,390.20 per month in salary; $72 in cash; $72,000 home; $250 savings bond; 4 dependents); *Wrenn* v. *Thornburgh*, 488 U. S. —— (1988) ($1,390.20 per month in salary; $72 in cash; $72,000 home; $250 savings bond; 4 depen. nts); *Wrenn* v. *Bowen*, 488 U. S. —— (1988) ($2,309.67 per month in salary; $46 in cash; $72,000 home; $250 savings bond; 4 dependents); *Wrenn* v. *Commissioner*, 486 U. S. —— (1988) ($1,073 per month in salary; $14,496 per year in retirement benefits; $42 in cash; $72,000 home; 4 dependents); *Wrenn* v. *Gould*, 484 U. S. 961 (1987) ($1,073 per month in salary; $8,400 per year in retirement benefits; $61 in cash; $72,000 home; 4 dependents); *Wrenn* v. *Bowen*, 484 U. S. 894 (1987) ($1,073 per month in salary; $8,400 per year in retirement benefits; $61 in cash; $72,000 home; 4 dependents).

We direct the Clerk of the Court not to accept any further filings from petitioner in which he seeks leave to proceed *in forma pauperis* under this Court's Rule 46, unless the affidavit submitted with the filing indicates that petitioner's financial condition has substantially changed from that reflected in the affidavits submitted by him in *Wrenn* v. *Benson* and *Wrenn* v. *Ohio Dept. of Mental Health*, 489 U. S. —— (1989).

It is so ordered.

SUPREME COURT OF THE UNITED STATES

88-6494 CURTIS L. WRENN
v.
LAWRENCE P. BENSON ET AL.

88-6497 CURTIS L. WRENN
v.
DEPARTMENT OF MENTAL HEALTH OF OHIO

ON MOTIONS FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Nos. 88-6494 AND 88-6497. Decided April 17, 1989

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

I dissent from this order for the reasons stated in *In re McDonald*, 489 U. S. ——, —— (BRENNAN, J., dissenting), and in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983) (BRENNAN, J., dissenting).

SUPREME COURT OF THE UNITED STATES

88-6494 CURTIS L. WRENN
v.
LAWRENCE P. BENSON ET AL.

88-6497 CURTIS L. WRENN
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DEPARTMENT OF MENTAL HEALTH OF OHIO

ON MOTIONS FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Nos. 88-6494 AND 88-6497. Decided April 17, 1989

JUSTICE STEVENS, dissenting.

Because I believe the preparation and enforcement of orders of this kind consumes more of the Court's valuable time than is consumed by the routine denial of frivolous motions and petitions, see *In Re Jessie McDonald*, —— U. S. —— (1989) (BRENNAN, J., dissenting); *Brown* v. *Herald Co.*, 464 U. S. 928 (1983) (BRENNAN, J., dissenting); *id.*, at 931 (STEVENS, J., dissenting), I respectfully dissent.